

March 25, 1994

LB 76, 984A, 991, 1224
LR 371

not be removed from office on the basis of something as vague as this, "when it shall appear" that he has been derelict. For people who may not be aware of it, a mandamus, a writ of mandamus is called an extraordinary writ and it will usually be obtainable when there is a specific defined duty on the defendant and a clear entitlement on the part of the plaintiff to whatever the action is that is not being done. But the duty has to be ministerial only and that means there is no discretion or opinion or judgment to be used by the official. If the official is required, in order to make the decision, to make a finding of a thing being this way or that way, all that a writ of mandamus can do is make the official make a decision but you can't make the official make the particular decision you want. For example, if the issue is presented and it is a duty placed on that official to reach a decision and the official refuses to reach a decision, you can bring a writ to force a decision but not a specific decision. Maybe a better example is with courts. And you can get a writ of mandamus from a higher court against a lower court...

SENATOR LINDSAY: One minute.

SENATOR CHAMBERS: ...if the lower court is not processing cases, but you cannot get an upper court...a higher court to force a lower court to reach a specific decision. So even though there is the allowance of a person to seek a writ of mandamus, under the vague provisions of this law, I think it's a nonoperational law. I don't think a mandamus could be obtain i under this, in other words.

SENATOR LINDSAY: Thank you, Senator Chambers. Senator Withem. Excuse me, is there a motion on the desk? And could you please read items for the record, Mr. Clerk?

CLERK: Mr. President, I do have some items. LR 371 is a study...or a resolution, a study resolution to be referred to the board. I have an Attorney General's Opinion to Senator Robinson. New A bill, LB 984A, by Senator Wehrbein. (Read by title for the first time.) Senator Ashford has amendments to LB 991. Health Committee reports LB 1224 to General File with committee amendments attached. (See pages 1444-47 of the Legislative Journal.)

I have a priority motion, Mr. President. Senator Haberman would move to adjourn until Monday morning, March 28, at 9:00 a.m.